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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/804,900	02/24/1997	ROBERT MECHALEY JR.	06318/005001	1485

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EXAMINER

POINVIL, FRANTZY

ART UNIT	PAPER NUMBER
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3628

DATE MAILED: 12/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
08/804,900

Applicant(s)

Mechaley et al.

Examiner

Frantzy Poinvil

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Oct 9, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-6 and 8-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Abelow (5,999,908).

As per claims 1, 12, 17 and 22, Abelow discloses a customer-based system which gathers real-time product/services usage information from software products or other services from customers or group of customers located at their respective consumer's premises. The system obtains these information and communicates usage information to remote computers or vendors

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of products/services. The data will be available on a database accessible to many parties. The data collected will enable vendors, managers or remote computers to examine specific customers' needs. Applicant is directed to column 10, line 15 to column 12, line 54; column 18, lines 1-62 of Abelow. Abelow also teaches detecting pattern of usages. Note columns 45-46. Abelow further teaches providing upgrades to the software based on consumer usages, patterns and demands. The upgrades are product functionality that can be perceived by the user or consumer and that is not within the subset when the at least one pattern has been identified. Note also columns 12 -14 of Abelow.

As per claim 2, note column 32, lines 1-49.

As per claim 3, note column 56, line 30 to column 57, line 39.

As per claims 4-5, collecting demographic data and geographical data is inherent in the system of Abelow.

As per claims 6 and 13, note column 17, lines 43-58; column 25, lines 54-65.

As per claim 8, note column 18, lines 2-49 and figure 1.

As per claims 9-10 and 15-16 note column 11, column 24, lines 52-59.

As per claims 11 and 14, note column 14, lines 28-42; column 16, lines 65-67; columns 17-18.

As per claim 17, note column 10, line 50 to column 11, line 9 and claim 1 of Abelow.

As per claims 18, 21 and 25, see the above rejection of claims 1 and 6.

As per claims 19-20 see the rejections of claims 2-3 above.

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As per claims 23-24 and 26-27 see the rejections of claims 2-3 above.

As per claims 28-30, note column 13, lines 35-58 and column 48, line 3 to column 49, line 22 and column 3, lines 17-30 of Abelow.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abelow (US Patent No. (5,999,908).

The teachings of Abelow are discussed above. As per claim 7, Abelow is noted to teach <sup>col 13 lines 18-33</sup> usage patterns. Abelow does not explicitly state employing fuzzy algorithm to the collected data to determine whether a said data pattern can be identified. However, the Examiner asserts that the use of fuzzy algorithm is merely a design choice from among a plurality of known analysis methods that can be contemplated in the system of Abelow.

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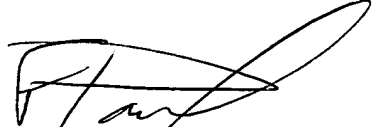
*Conclusion*

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantzy Poinvil, whose telephone number is (703) 305-9779. The examiner can normally be reached on Monday through Thursday from 7:30 AM to 6:00 PM.

The fax phone number for this Art Unit is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

FP  
07Dec02



**Frantzy Poinvil**  
**Primary Examiner**  
**Art Unit 3628**